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South African Women:  
The Other Discrimination

Adele van der Spuy

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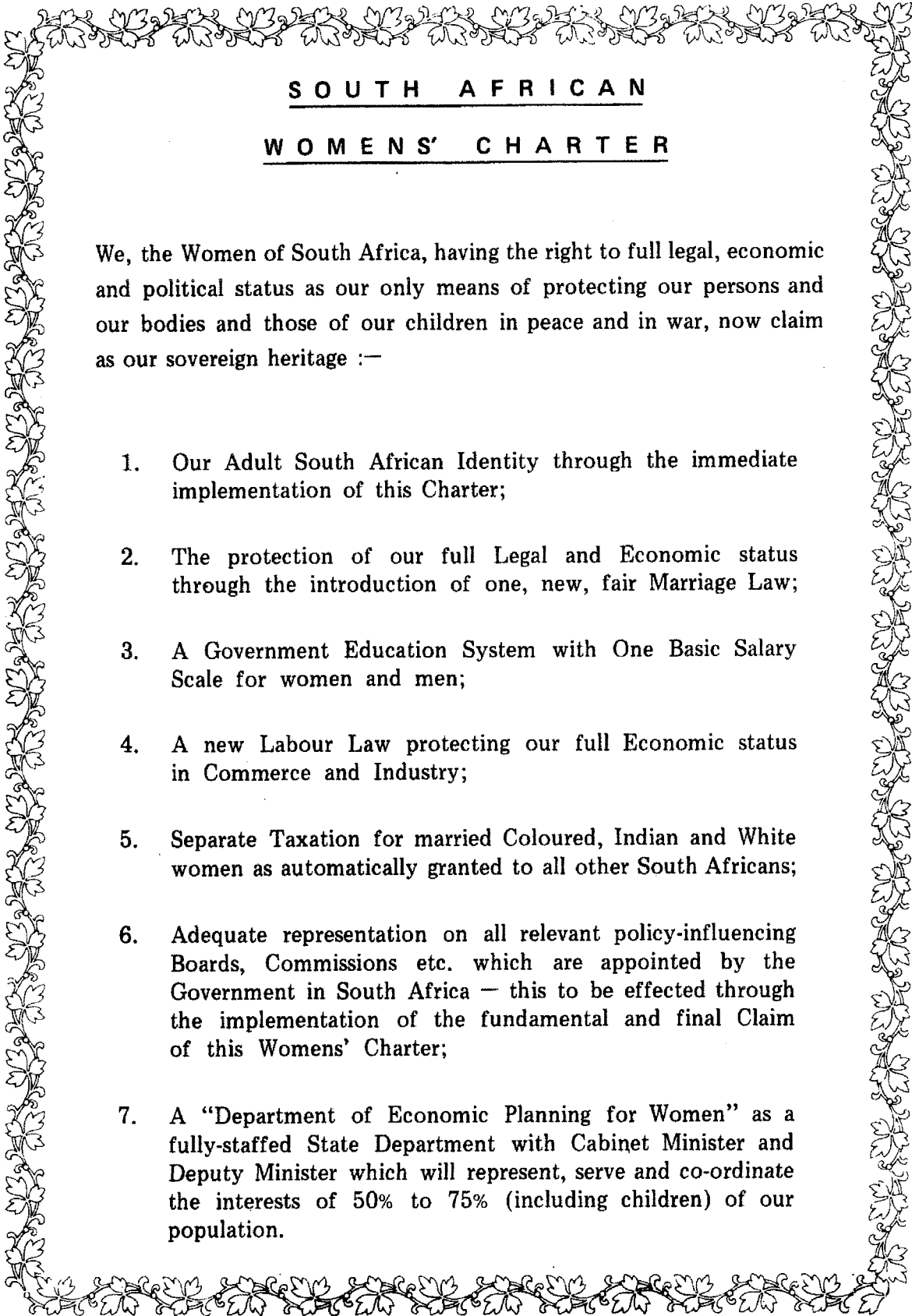
# Munger **Africana** **Library Notes**

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South African Women  
The Other Discrimination  
Adele van der Spuy

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*Cover illustration:* Cartoon from *Die Vaderland* (August 17, 1977), the afternoon Afrikaans paper in Johannesburg, following Ms. van der Spuy's confrontation at the Union Buildings. She is saying, "We are not throwing stones, Sergeant. Put away your sneezing machine [a Land rover adapted to project gas and a kind of talcum powder that clings and makes the gas more effective]." The signs are "Action 75" and "Freedom."



## SOUTH AFRICAN

### WOMENS' CHARTER

We, the Women of South Africa, having the right to full legal, economic and political status as our only means of protecting our persons and our bodies and those of our children in peace and in war, now claim as our sovereign heritage :—

1. Our Adult South African Identity through the immediate implementation of this Charter;
2. The protection of our full Legal and Economic status through the introduction of one, new, fair Marriage Law;
3. A Government Education System with One Basic Salary Scale for women and men;
4. A new Labour Law protecting our full Economic status in Commerce and Industry;
5. Separate Taxation for married Coloured, Indian and White women as automatically granted to all other South Africans;
6. Adequate representation on all relevant policy-influencing Boards, Commissions etc. which are appointed by the Government in South Africa — this to be effected through the implementation of the fundamental and final Claim of this Womens' Charter;
7. A "Department of Economic Planning for Women" as a fully-staffed State Department with Cabinet Minister and Deputy Minister which will represent, serve and co-ordinate the interests of 50% to 75% (including children) of our population.

## PREFACE



Adele van der Spuy is an intelligent, militant, dedicated worker for Women's Rights in South Africa. Currently she is Chairwoman of Action 75 Aksie, formed in 1975 to promote full legal and economic status for all South African women. Action 75 reports involvement of more than 300,000 women of all races.

Adele van der Spuy parlayed her considerable success as a clothing designer in Johannesburg, London, and Paris to becoming Managing Director of Delmarie Originals, a manufacturer, for three years. Among other things, the company was successful in introducing new kinds of uniforms into the South African market, including those for airline stewardesses, nurses, and so on. It was during this time, she says, that "I learned firsthand about the status of South African women of all races."

She is 35-years-young, married to a lawyer, Adriaan van der Spuy, has two daughters, and a great deal of energy.

Three years ago, along with two dozen other women, she "stormed" the government buildings in Pretoria to try to present a petition on Women's Rights and was knocked about in the effort. Many Afrikaans-speaking men refer to her only in pejorative terms. Percy Qoboza, editor of The Post, says this is because Afrikaners are the most chauvinist men in the world, with the exception of his own Zulu brothers. But Ms. Van der Spuy is the Chairperson of the National Party Branch in the Brandeis constituency of Johannesburg and was put forward by her branch as the party nominee for parliament in the last election. This action was overridden at a higher party level and she did not stand.

She is currently Managing Director of Cosmos Publications, which has published a handsome commemorative edition of Olive Schreiner's classic "Women and Labour" in both English and Afrikaans.

Ms. Van der Spuy's interests are focused on the women's movement, but she is involved in a plethora of other activities. With characteristic determination and chutzpah she told this editor, "I haven't had many great achievements *yet!*" ... E.S.M.

## SOUTH AFRICAN WOMEN -- THE OTHER DISCRIMINATION

Adele van der Spuy

It was claimed by the South African Secretary of Information, Dr. Eschel Rhoodie, in a television program called "Report" (Verslag) in June, 1977, that South Africa is in advance of many countries of the world with respect to the emancipation of women -- emancipation, that is, from the historical bonds of subjugation in a paternalistic society. The statement sounds superficially plausible if one confuses the "comforts" of white, enfranchised, "privileged" South African women with the real position of those women who assert themselves as individuals in the professional, business, and political fields. Then the statement becomes a bit of hollow puffery.

Let us examine the real position critically. It is sometimes pointed out that in the year 1930 South African women got the vote, and that this was in advance of many other western countries. It is further pointed out that since 1971, when certain old Roman statutes<sup>1</sup> concerning the protection of women's sureties were abolished, very few differentiations remained between men and women (particularly unmarried women) in South African law. Some people actually think that women have a preeminent or privileged status because the legal age of puberty is 12 for a girl, 14 for a boy. It is also said that a girl can marry with only parental consent when she reaches 15 years of age, whereas a boy must wait until the age of 18 because he can marry with only parental consent. Before those ages, 15 and 18, these young people could have married only with the consent of the Minister of the Interior. These are but superficial so-called "advantages" that women have.

In general, our position in South Africa is this. Historically our system is the Roman-Dutch system of law. Now, under Roman Law the woman was under the complete patria potestas of the pater familias (the father of the family), who had complete rights over his wife and children. The woman was as completely under the tutelage of the pater familias as any one of his children. According



„SKUTTE op die ore, manne! Dis ons geheime wapen . . .”

[“Earmuffs, on your ears, men! This is our secret weapon. . .” Rapport (August 21, 1977)]



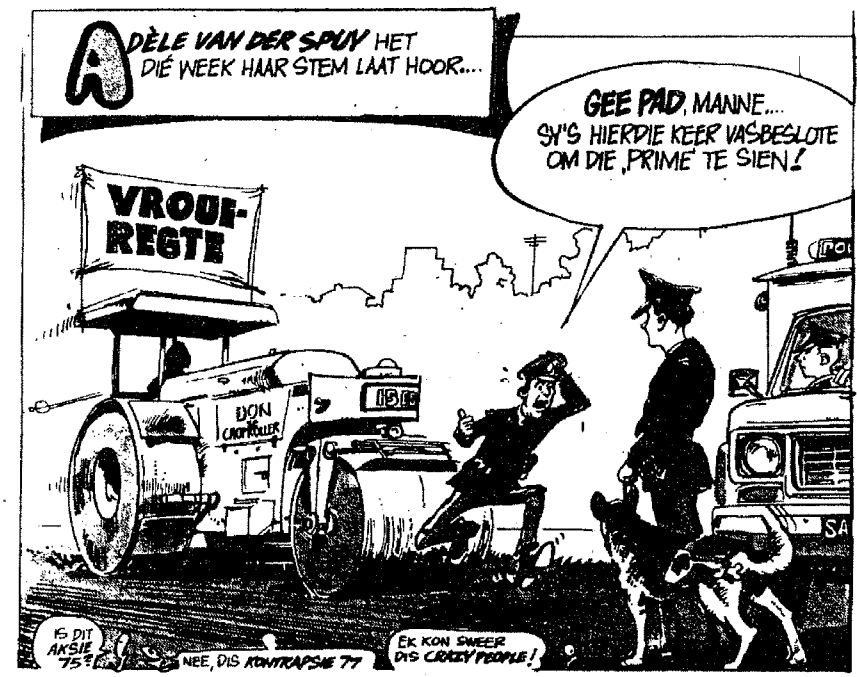
to Dutch Law, the father also had complete power over his wife's person and property, as well as over her extra-domiciliary activities -- that is, over her social activities as well as her economic activities. At fairly early time only one form of marriage was recognized in the Dutch Law, and that was marriage in community of property. This meant that when a man married a woman, their property became communally owned and was controlled by the male spouse as the "controller of the joint estate."

Some time later, during the sixteenth century, the Dutch Law permitted "antenuptial contracts," which the spouses made before marriage and which had the effect of excluding from the community estate dowries that may have been settled on the brides by their fathers or other relatives. The idea was to protect the dowry from the husband's clutches and to keep it as the wife's separate property. Another benefit was that the male spouse's power over the wife's person could also be negated by means of what was called "the exclusion of the marital power." This marital power was a power both over the person of the wife and over the family, as "head of the household." So far as the power over the wife's person is concerned, the modern developments of the Roman-Dutch Law are such that few of these powers are left. Recent court cases have held that it is doubtful whether a husband, even in marriages in community of property, could still chastise his wife by assaulting her physically. It was also held, in a subsequent case, that a husband could not stop his wife from doing whatever she pleased, even from having her own lover. This was held in a specific case in which a husband sought the court's interdiction against the lover meeting his wife, and the court held that the courts no longer had the power of restraining the woman because she had the right to use and dispose of her own body as she chose. That decision was handed down in the Witwatersrand Local Division of the Supreme Court of South Africa during the year 1969.

Since 1953, marriages "in community of property" have by reason of what is known as the Matrimonial Affairs Act and its amendments (also known as the Bertha Solomon Act<sup>2</sup>) been rendered more acceptable to women married in community of property. In fact, however, it now appears that this Act actually had the effect only of "pruning the weed," since it entrenched the institution of marriage in community of property as an automatic consequence of marriage and thereby extended this anachronism in South Africa Law.

The fact is simply that under the various sections of the Act -- which deals, for example, with a woman's right to receive her own income at its source, or her right to deal with certain fixed property left to her -- is entrenched as a sort of exemption from the general set-up under our law, which is that she is in such a case still a minor under the control of her husband. In other words, she has these rights by way of an exception, and this is what we have termed her "continuing beggar status." She may, for instance, go to court in certain cases and complain and





[From Rapport, the Sunday Afrikaans paper (August 21, 1977). The banner on the steam roller says "Women's Rights." At the top it says that Adele van der Spuy made her voice heard this week. The agitated policeman is exclaiming to the policeman with the policedog: "Get cracking, man, she is determined this time to see the Prime (Minister)." Side notes include "I can swear these are crazy people."]

get a judge to order the division of the joint estate, or to place certain restraints upon an unreasonable husband, but it remains for her to have to approach the courts to ask for a special dispensation, and this is what we think can fairly be termed a status of begging for certain privileges.

Some 52 percent of marriages in South Africa among white people are still in community of property, and in all of those marriages it can justifiably be assumed that the husband still holds the preeminent position of power. Of course, it is often said that a wife can "have her own checkbook" and can "conduct her own affairs," especially if she is a public trader. But often she will have to exercise her legal rights -- that is, go to court -- in order to get the "benefits" of the Matrimonial Affairs Act. This is the main objection to the present system of marriages in South Africa which are by Common Law and, automatically, in community of property.

The situation is different in black marriages. A black person marrying by Christian rites, either in the Church or by a civil ceremony, is automatically married out of community of property, unless one month before the marriage the spouses repair to certain officials<sup>3</sup> and declare that they wish to be married not out of, but in, community of property. Unless they make such a special statutory declaration, the marriage is automatically out of community of property and of profit and loss. It is significant that even in these cases the husband's marital power is not ipso facto excluded. Even in the case of black marriages, the husband still has the marital power as head of the family and as controller of the wife's person. It is this circumstance which we still find objectionable, and gravely prejudicial to the woman as a dignified and separate person in law.

In marriages out of community of property -- that is, by antenuptial contract, in which the marital power has been excluded -- women have the so-called "complete contractual capacity, of capacity to act," but this is only illusory. In terms of the Insolvency Act (Bankruptcy Law) her property is seized and kept by the trustee until she proves it to be her separate property. Also, in terms of the Matrimonial Affairs Act, owing to some drafter's gremlin, her property can still be alienated, mortgaged, or burdened with a servitude with her consent, which, however, if "unreasonably withheld," the Court may dispense with.<sup>4</sup>

The worst situation emanates from the Income Tax Act of 1962, of which Sections 7 and 68 provide that no matter how a woman is married, whether by antenuptial contract or not, her income is "deemed to be that of her husband." In other words she is treated, for purposes of the Income Tax Act, as an economic and legal minor in direct conflict with the supposed "freedoms" that flow from marriages by antenuptial contract.

The Income Tax Act therefore places a serious burden on

the so-called "complete legal status of women" in South Africa. This point is often overlooked in the interests of what is termed "a beneficial tax policy for families." In fact this last is not true, because when families earn more than Rand 8400 in South Africa (which is about \$9,600 U.S.), any benefits of joint taxation completely disappear. Unlike the situation that obtains under Federal Tax Law in the United States, we do not have in South Africa the possibility of being taxed as a married couple. Rather, we have the misfortune of being taxed more heavily because of the marriage, and this hits many South African couples, especially in cases where the wife works and where the joint income of the spouses exceeds R8400. When couples earn something like R20,000 (\$23,000 U.S.), then the extra bite into the joint income becomes alarming, to such an extent as even to discourage marriage among certain couples. It would certainly discourage any woman who has a well-paid professional job from getting married. It is therefore not only from the standpoint of good public morals and policy that this law should be changed, but also from the direct necessity of according full status to women and of rendering them full value as human beings under the law.

There are other demerits of the whole system in South Africa, despite the much-vaunted antenuptial contract system. In this country if a woman is a member of the Civil Service she automatically forfeits her rights and privileges when she marries, unless the Civil Service Commission or the particular Minister or Administrator decides to the contrary. That relevant law also distinguishes between men and women with respect to the ages at which they can retire from the Service with full pension.

On the subject of pension rights, it is interesting to note that under the Income Tax Act women, when they are married, are not regarded as having the right to deduct a separate and full pension or annuity contribution in addition to that of their husbands. For instance, under the Income Tax Act the maximum annual contribution to an annuity that can be deducted is R3500 per annum (about \$4,000 U.S.), and if the husband claims this maximum on his own account a woman cannot deduct any further contribution of her own. The same applies to a pension, where the maximum annual deduction allowed is R1500 (about \$1,700 U.S.). Therefore, if a married woman takes out a pension separately from that of her husband, and if he has already claimed the maximum of R1500, she has no right to make any additional claim. This is another serious form of discrimination against the married woman.

Under certain registration laws -- for example, the registration of titles to land -- a married woman must disclose her marital status and give the name, address, and occupation of her husband, something which no man is required to do when he takes transfer of property bought in South Africa. This requirement of filling in "your married status and particulars of your husband" occurs on innumerable administrative forms, from taking out a license to buying a stove. No man is ever asked whether he is married and if so "how" he is married. No man is ever requested

to produce his antenuptial contract when buying any article of substantial value.

There are other things that women cannot do. They cannot, for instance, work underground, according to the mining laws of the country; they cannot box or wrestle, under the terms of the Boxing and Wrestling Acts. But most women are not concerned with this sort of activity. They are really concerned with having their full status as human beings with minds of their own recognized. For instance, if a woman gets married and finds that by virtue of the law she is suddenly without a job in the Civil Service (unless some official bestows the favor on her) or if she is a teacher doing work of the same quality as her male counterpart and discovers that she receives as much as 33 percent less in salary, she would be justifiably angry. One is not concerned with boxing and wrestling or with stripping to the waist in the coalpits -- red herring issues -- when one is concerned with recognizing people as human beings in such activities as they are fit and willing to occupy.

Apart from the legal position, the economic situation is that women who do work of the same value as men simply do not get paid the same as their male counterparts on the grounds that they are not the breadwinners. This is a total fiction, because there has never been a national survey as to what the male does with his "won bread" anyway. He may drink it up on the way home; he may gamble it away on the horses; he may keep a woman or several women with it somewhere. There is no guarantee and no law that deals with what he does with his take-home pay. If he decides to spend some of it on a woman working at a massage parlor that may be covering for a brothel, then if he is called as a witness his name is protected by not being published; that is, the man gets off scot-free while the masseuse is named and held to suffer publicly.

In general, women are much more devoted than men to their homes, and if they work their pay generally finds its way toward support of the family and the house. It is therefore a complete fiction of the law that the man is entitled to a larger wage for the same work because he is the breadwinner. In any event, the single man with no dependents certainly does not receive less pay for this reason. It is obvious from many advertisements in the South African press that there is a large gap between women's pay and men's pay for exactly the same job. The argument that women cannot do all the "men's work" for which "men are more fitted because they are physically stronger" does not hold. The point is not who is the physically stronger. The contention is that when two people do the same work and do it equally well, they should not, on the grounds of gender, be treated differently with respect to the amount of remuneration.

Another large field clamoring for correction is that of domicile. A married woman is in fact entirely dependent on the man to whom she is married for her "domicile" -- that is, the legal

paraat...



WEET OOK NIE WAT AANGAAN NIE... SEKER WEER DAA! VROU WAT GAAN BETROEG..

[The scene is in front of the government buildings (Union buildings) in Pretoria which were closed for two hours. One soldier says to another: "I don't know what is going on. . .it must be those women demonstrating again." In lower right corner: "Yes, and this time there might be twenty." From Die Transvaler, one of two Afrikaans morning papers. Johannesburg (August 18, 1977)].

home of both parties. The woman's domicile automatically follows that of the husband, and this position is a source of great concern among liberated South African women. Why should a woman who has to leave a good-for-nothing husband be dependent on him for her domicile in whatever unknown areas he may be staggering around? The law does allow a certain amount of latitude so far as divorce proceedings are concerned. If she resides for one year within the jurisdiction of the court in which she brings the action, then she can, by merely alleging that the husband is domiciled within the Republic, get that court to have jurisdiction in the matter. But it is a completely unsound principle. Normally she will have her domicile where she and her husband live. But when they part why should she not simply be entitled to change her domicile to wherever she may find herself in the world; in short to take her "domicile of choice?" The whole question of a dependent domicile is a slur on the independence and integrity of women and their right to act for themselves.

It is pointed out that women are in fact protected in many other ways. For instance, when the husband dies, life policies up to a specified amount are protected in terms of certain sections of the Insurance Act from being grabbed by the creditors if he should die insolvent. This would apply especially, of course, to marriages out of community of property where the woman would have no right to claim a division of the joint estate. However, the fact of the matter is that the policy either must be ceded to the wife or she must be made the beneficiary before she claims the benefit under the Insurance Act.

This is another area of complete unfairness to women. They are practically forced in South Africa to marry in community of property, surrendering their legal status and placing themselves under their husband's tutelage in order to get what is regarded as the best bargain out of marriage. It is most unjust to force women to go into a community marriage in order to get such "protection." The answer is to scrap all existing laws relating to community of property marriages and antenuptial contracts and to provide that men and women, when they get married, are each entitled to the proprietary accruals of each of them from the date they marry until the date when marriage comes to an end. The law should protect each of the spouses against the acts of the other calculated to destroy his or her right to the accrual -- for example, in the case of one party not leaving anything to the other by will, or of one party perhaps squandering or giving away to strangers the benefits of what can fairly be termed his or her "accrual" during their marriage. The proposal is that the accrual should not be a joint estate or a "third estate" in addition to that of the spouses. A record could be kept officially, perhaps, showing what the assets were of each party before the marriage and, upon divorce or death, a balance could be struck as to the assets then extant. The net benefit could then be worked out to which either spouse would automatically have a right upon termination of the marriage. This would give either spouse sufficient protection in the case of death, disinheritance, or divorce, and on the

other hand would retain the right of each spouse to be married as a person of full legal status.

It is often said that although South African law and economic policy have not nearly reached the stage where a married woman is of equal value to a man, women after all are "free" to contract a marriage either in or out of community; to put it more precisely, "to place herself freely under the power of the man or not as she wishes." It was held in a case of the Appellate Division in 1945 that the legal power of disposition belongs to the husband because the wife "either expressly or by implication agreed that upon such marriage he should have such power." It was pointed out that such power could easily have been excluded by antenuptial contract. We have earlier condemned this as a negative approach. It is like saying that you do not have, initially, any real status but that you can always acquire it by making some legal contract to that effect. No man has to do this. Why, then should women have to do it?

It is this circumstance which I think offends any civilized, balanced person when dealing with the South African scene and women's rights. The contention that women both willingly and knowingly surrender their legal status upon marriage is dubious. In fact, Marriage Law is excluded from compulsory education. Clearly, therefore, women have not yet attained in South Africa a legal and economic status, either in private law or in some public laws such as the Income Tax Act and others mentioned above.

Under the Labour Laws and the Industrial Laws, women do not have the same status or representation as men or industrial councils or other councils that advise the government. When boards, commissions, committees, and the like are appointed by the government, they are, with very few exceptions, totally male bodies. Even on matters such as abortion, the amendment of women's rights under the Marriage Laws, and so forth, it is significant that the bodies are either all male or they have perhaps one woman representative (as, for example, on the Committee on the Revision of Marriage Laws).

On questions of taxation, women have never had any representation on the Standing Commission that advises the Department of Finance. On all policy-influencing bodies -- with the notable exception of the recent state enquiry into the position of the Coloured people in South Africa, to which Professor Erica Theron was appointed as chairman -- women are in general not appointed. In a very real sense, therefore, it is correct to say that in South Africa, with its male-oriented society, it is still clearly evident that women, especially married women, have second-class status as citizens outside their homes.

The home is still held up as the woman's only "real place," and raising a family is her true "profession." Her right to come out of the house and assert herself is looked on with disapproval by most men in South Africa, including some of the



top men in government. The results are clear -- we have had no female National Party members of Parliament, and at the moment, out of a house of 165 elected members, there is a single woman member, Helen Suzman, of the Progressive Party. It is very difficult for a South African woman to gain candidature in any election through the usual party system, or even to gain a nomination in any particular constituency. Women are often deliberately maneuvered out; there is widespread prejudice against women in politics in this country and they are rarely accepted as public figures.

Although the South African white woman has the sop of a vote -- which was granted to all white women in 1930 -- her lack of economic status denies the very substance of this vote, and seriously impairs her adult functioning. As we have seen, she certainly does not have the concomitant responsible taxation status, and the vote without the concomitance of responsibility to the country in an economic sense seems to us hollow indeed.

Dr. Rhoodie's statement mentioned earlier that South African women are, comparatively speaking, "in advance of other countries" is demonstrably questionable. It is true that our women have better rights than women have in some parts of the world, especially in the Middle East, but they are far from attaining the ideal that we think should be set by every modern person for the twenty-first century -- that is, that irrespective of race, creed, or gender, one should be able to be regarded as a full human being.

The relevance of the attainment of full human status for all South African women has for many decades been submerged by the emphasis in the media on the legal distinctions between the various ethnic population groups in South Africa. We conclude that the elimination of any inequitable discrimination among population groups in South Africa is in fact peripheral to the elimination of the fundamental legal inequities currently visited upon women as a sex. The granting of full human rights to all South African women (who comprise 50 percent of an estimated total population of more than 26 million persons) would be an evolutionary milestone in African society.

In the present-day international community of nations, this particular recognition of human rights in South Africa would go a long way toward redressing the oft-asserted denial of human rights in our country. The nation's political survival has thus far depended on policies laid down by all-male groups, and it will be interesting to see whether the present racial and political polarization will be harmonized in the future through the granting of full human rights to the women of South Africa. This is an in-depth consideration which only the nonthinking person could dismiss as being irrelevant in the circumstances in which South Africa stands in the world today.

## APPENDICES

### BLACK SOUTH AFRICAN WOMEN

*The following excerpt from a study by Muriel Horrell on The Rights of African Women: Some Suggested Reforms (Johannesburg: South African Institute of Race Relations, 2nd ed., 1975) underlines the seriousness of the problem with respect to the rights of black women. [Editor]*

"[African] women, who under archaic tribal law were always subject to a man's guardianship, have in many cases become wage-earners and often contribute to the support of their families or maintain themselves and their children by their own efforts. Traditional tribal attitudes to women are changing."

"Left to themselves, African courts of law would no doubt have adjusted themselves to developing attitudes and circumstances, as they are doing in other parts of the continent. But in South Africa, white administrators and judicial officers have institutionalised native law, thus preventing flexibility. The subordinant position of women has been maintained in many aspects of life, to their material disadvantage. Inequitable and distressing situations arise. The stereotype applied in courts of law may operate against women more harshly than tribal law did."

"Uncertainties arise because of conflicting provisions of native law and the common law, and in numbers of respects the exact legal status of an African woman may be in doubt. Clarification is needed. Furthermore, there are various differences between provincial ordinances and regulations which would appear to be unwarranted."

This issue has been edited by Wilma Fairchild and typed by Marcia Nelson.

## BLACK WOMEN IN ZIMBABWE

*The following paraphrased extracts from the report of the multiracial Commission to Inquire into the Legal Status of African Women of the Anglican Church in the Diocese of Mashonaland are of interest in the context of this issue. In Rhodesia/Zimbabwe Roman-Dutch Law, not Anglo-Saxon Law, applies outside of customary law as it does in South Africa. Six of the ten members of this 1976 Commission were women. [Editor]*

Customary law, as it exists and is applied in Rhodesia at present, deprives the African woman of her basic rights and freedom. African women are now deemed to be minors at law and suffer many legal disabilities, although this is a perversion of traditional law which did not know the concepts of minority and majority. The idea of female minority status is gaining popularity among African men. Traditional law as it is applied in the modern society is completely out of keeping with the realities of the African woman's status.

According to tribal courts women must have the assistance of their guardians before entering into transactions with other people. But the District Commissioner's courts apply the laws of Rhodesia that allow all people to make contracts. Under customary law, the father is entitled to custody of his children if he has agreed to the amount of lobolo and if a substantial amount has been paid. But the African Law and Tribal Courts Act has introduced the rule that any decision regarding custody must be in the best interests of the child concerned and the court will generally award custody to the mother until the child is at least seven.

Women are not recognized as being capable of owning property outright, except that a wife could own outright umai and mavoko property. Umai is usually cattle accrued by a wife on the marriage of her daughter. Mavoko is property acquired by personal labor such as the fabrication of pots, baskets or payment for being a midwife or an herbalist. Logically this could be extended to wages received as a teacher or nurse. But it is accepted that a woman's earnings belong to her guardian and this can cause great hardship in a divorce when the husband's family can claim all her property and leave her with nothing.

The Commission found that, among European women, many African women are willing to accept their status and are happy to remain tied to the old ways. But there are signs that many of them are chafing under present bonds and are prepared to fight for their emancipation.

Black women are more discriminated against than are their white sisters. Customary laws seal African women off from many benefits conferred on European women, such as the Married Persons Act, the Legal Age of Majority Act, and the Deceased Estates Succession Act.

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Edited by Anna H. Smith

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